In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 400

UTAH JUNK COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

MEMORANDUM FOR THE RESPONDENT

This case arises out of the denial by the Price Administrator of a protest which petitioners filed with the Price Administrator on August 7, 1944. The protest set forth objections to the regulation establishing maximum prices for iron and steel scrap insofar as it failed to permit an extra allowance for processing scrap for use in lead smelting during the period from April 25, 1942 to February 10, 1943 (R. 1–12). Such an allowance was

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available under the regulation, upon application, from December 21, 1943, and petitioner was authorized to charge it from February 19, 1944 (R. 107–108). Among other grounds of objection to the failure of the adjustment to relate back to the period from April 25, 1942 to February 10, 1943, during which petitioner had made deliveries, petitioner claimed that the regulation was then invalid because of the absence of the allowance.

In the proceedings upon the complaint filed with the Emergency Court of Appeals following denial of the protest, petitioner relied solely upon the claim of invalidity, asserting that, if the regulation were held to be invalid during the period in question, its purchaser would be willing to pay the additional sum (R. 112). Since petitioner's attack was thus limited, and since petitioner did not challenge the validity of the regulation as of the time the protest was filed, the court below dismissed the complaint on the authority of its decision in the case of *Thomas Paper Stock Company et al.* v. *Bowles*, 148 F. (2d) 831 (E. C. A. 1945). The court held in that case "that an 'objection was not available to or properly included by the complainants in their protest to the Administrator because it involved a ground of invalidity which did not exist when the protest was filed,

having admittedly been corrected by the Administrator' prior to the filing of the protest" (R. 112). This Court has granted a petition for a writ of certiorari in the *Thomas Paper Stock* case (No. 67, present Term). Respondent believes that the court below correctly decided both the *Thomas Paper Stock* case and the present case. However, in view of ~~the~~ granting of the petition in the *Thomas Paper Stock* case, respondent does not oppose the petition in the present case.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General,

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

SEPTEMBER 1945.

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